BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2017

CORAM

THE HON'BLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.R.C(MD).No.318 of 2017
and
Crl.M.P.(MD).No.3052 of 2017

Annadurai ... Petitioner/Accused

-Vs-

The State rep. by,
The Inspector of Police,
CBCID-Ramanathapuram,
Ramanathapuram District.
(In Crime No.16 of 2009) ... Respondent/Complainant

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the order, dated 26.09.2016, made in Crl.R.C.No.5 of 2011, on the file of the learned Additional District Judge, Ramanathapuram, against Cr.M.P.No.2228 of 2010 in C.C.No.27 of 2010, order dated 14.02.2011, on the file of the learned Judicial Magistrate Court No.II, Ramanathapuram and to set aside the same as illegal and allow the above revision as prayed for.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
for M/s. Ajmal Associates

For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor
(Crl. Side)

O R D E R

This Criminal Revision Petition has been filed, challenging the order, dated 26.09.2016, passed in Crl.R.C.No.5 of 2011, by the learned Additional District Judge, Ramanathapuram.

2. The petitioner is an accused/A1 in C.C.No.27 of 2010, on the file of the learned Judicial Magistrate No.II, Ramanathapuram, for the offences punishable under Sections 468, 465, 471, 420 and 120(b) of IPC. Totally there are two accused in this case. The case of the prosecution reads as follows:

The District Collector, Ramanathapuram District has called for tender for construction of 275 houses for Tsunami affected people. The petitioner/A1 was the highest tenderer and as per the tender condition, he has to pay 2% of the total tender amount as EMD. For the said purpose, the petitioner produced a Fixed Deposit Receipt issued by the Union Bank, Salem Five Road Branch, for a sum of Rs.14,68,000/- and produced the same before the authorities and after accepting the same, the tender was awarded in favour of the petitioner. Thereafter, on verification of the Fixed Deposit Receipt submitted by the petitioner, the Union Bank, which said to have issued the Fixed Deposit Receipt, was enquired, and the Branch Manager informed that, above said Fixed Deposit Receipt was not issued from their Branch and when the same was informed to the petitioner, on the next day, he has submitted another EMD for Rs.15,00,000/- taken from the Canara Bank, Ramanathapuram.

3. In the above circumstances, since the first EMD receipt submitted by the petitioner is a forged one, a complaint has been filed by the District Collector, Ramanathapuram District. Based on the same, a case was registered for the offences punishable under Sections 468, 465, 471, 420 and 120(b) IPC. After investigation, final report has been filed against the petitioner and the another accused namely, Gopalakrishnan, who said to have been the sub-contractor under the petitioner.

4. At this stage, the petitioner filed an application under Section 239 Cr.P.C., to discharge him from the above charges. Earlier the Trial Court allowed the application and discharged the petitioner. Challenging the same, he has filed a revision before the Additional District and Sessions Court, Ramanathapuram and the Revisional Court has allowed the revision and set aside the order passed by the Trial Court. Now, challenging the same, the present revision has been filed.

5. Heard Mr.Ajmal Khan, learned Senior Counsel appearing for the petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent and perused the records available.

6. The learned Senior Counsel appearing for the petitioner submitted that eventhough the petitioner is the highest tenderer, after taking tender he has entrusted the work to A2/Gopalakrishnan, who was his sub-contractor, and A2 informed the petitioner that he will pay the EMD amount and believing his words, the petitioner asked A2 to submit the Fixed Deposit Receipt, and it is only A2 forged the document and furnished a false Fixed Deposit Receipt to the authorities. When the same was brought to his knowledge, immediately the petitioner furnished another Fixed Deposit Receipt for a sum of Rs.15,00,000/- and also filed a complaint against A2 and the same is also pending investigation. From the materials collected during investigation

also revealed that it is only A2, who has committed the forgery and the petitioner is innocent and he has not committed any crime. Considering all the facts, the Trial Court allowed the application but the Revisional Court, without proper appreciation, dismissed the same.

7. The learned Senior Counsel for the petitioner further submitted that from the materials available on record, there is no prima facie case made out against the petitioner and it clearly shows only A2 has committed the forgery and the petitioner has been wrongly implicated in this case.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that admittedly the petitioner is the highest tenderer and the Fixed Deposit Receipt was also submitted in his name only, which was subsequently found forged and it is not open to the petitioner to say that he has not committed any crime, and A2 alone has forged the documents. The materials available on record clearly indicates a prima facie case against the petitioner. Considering all the materials, the Revisional Court has allowed the revision and set aside the order of the Trial Court.

9. I have considered the rival submissions, admittedly the petitioner herein is arrayed as A1, who was the highest tenderer and tender was also awarded in his name. At the time of finalising tender, as per the tender condition, he was asked to submit the Fixed Deposit Receipt, and the same was submitted by him, and the Fixed Deposit Receipt stands in his name, which was subsequently, found to be forged. Even though, there is an extra judicial confession of A2 before the Village Administrative Officer admitting his guilty, this extra-judicial confession cannot be taken as a ground for discharging the petitioner/A1, as his confession could be considered only during the trial. From the materials available on record, it is seen that the Fixed Deposit Receipt stands in the name of the petitioner/A1, which was found to be a fake one. Apart from that at the time of framing charges, the Trial Court should only consider the materials placed by the prosecution, and it can not conduct any roving enquiry. But the Trial Court without considering all these facts, mechanically allowed the application and the Revisional Court considering the entire materials, allowed the revision and set aside the Trial Court's order, as prima facie case made against the petitioner. Hence, there is no need to interfere in the order passed by the Revisional Court. Therefore, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

10. However, it is always open to the petitioner to raise all his defence during the course of trial. Since the matter is pending from 2010, the learned Judicial Magistrate No.II,

Ramanathapuram, is directed to proceed with the trial in C.C.No.27 of 2010 and dispose of the same, within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1.The Additional District Judge,
Ramanathapuram.

2. The Judicial Magistrate No.II,
Ramanathapuram.

3.-Do- thro' The Chief Judicial Magistrate, Ramanathapuram.

4.The Inspector of Police,
CBCID-Ramanathapuram,
Ramanathapuram District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.Ajmal Associates, Advocate SR.No. 67401

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24.07.2017

pjl
JM/SV AAM/SAR 1/01.08.2017/4P/7C